

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Raul Uriarte-Limon,

Plaintiff,

v.

Krystal Enterprises LLC, a
California Limited Liability
Company;
and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Raul Uriarte-Limon complains of Krystal Enterprises LLC, a California Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who uses a wheelchair.
2. Defendant Krystal Enterprises LLC owned the real property located at or about 17903 Valley Blvd., La Puente, California, in April 2015.

1 3. Defendant Krystal Enterprises LLC owns the real property located at or
2 about 17903 Valley Blvd., La Puente, California, currently.

3 4. Defendant Krystal Enterprises LLC owned the Mobil gas station ("Gas
4 Station") located at or about 17903 Valley Blvd., La Puente, California, in April
5 2015.

6 5. Defendant Krystal Enterprises LLC owns the Mobil gas station ("Gas
7 Station") located at or about 17903 Valley Blvd., La Puente, California,
8 currently.

9 6. Plaintiff does not know the true names of Defendants, their business
10 capacities, their ownership connection to the property and business, or their
11 relative responsibilities in causing the access violations herein complained of,
12 and alleges a joint venture and common enterprise by all such Defendants.
13 Plaintiff is informed and believes that each of the Defendants herein,
14 including Does 1 through 10, inclusive, is responsible in some capacity for the
15 events herein alleged, or is a necessary party for obtaining appropriate relief.
16 Plaintiff will seek leave to amend when the true names, capacities,
17 connections, and responsibilities of the Defendants and Does 1 through 10,
18 inclusive, are ascertained.

19
20 **JURISDICTION & VENUE:**

21 7. This Court has subject matter jurisdiction over this action pursuant to
22 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 8. Pursuant to supplemental jurisdiction, an attendant and related cause
25 of action, arising from the same nucleus of operative facts and arising out of
26 the same transactions, is also brought under California's Unruh Civil Rights
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is
2 located in this district and that Plaintiff's cause of action arose in this district.

3
4 **FACTUAL ALLEGATIONS:**

5 10. Plaintiff visited the Gas Station in April 2015 to buy snacks at the Food
6 Mart location at the Gas Station.

7 11. The Gas Station is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 12. Parking is one of the facilities, privileges, and advantages offered by
10 Defendants to patrons of the Gas Station.

11 13. Although parking spaces are one of the facilities available to patrons of
12 the Gas Station, there was not a single compliant accessible parking space
13 reserved and marked for use by persons with disabilities in compliance with
14 the Americans with Disability Act Accessibility Guidelines (ADAAG) in May
15 2015.

16 14. Instead, there was a single parking space ostensibly reserved for persons
17 with disabilities that did not have an access aisle attached to the parking space.

18 15. Plaintiff, on information and belief, alleges that an accessible parking
19 space reserved and marked for persons with disabilities used to exist at this
20 location. Unfortunately, the defendants do not maintain the parking lot so that
21 the parking spaces designed for use by persons with disabilities remain
22 available.

23 16. Currently, there is not a single accessible parking space reserved for
24 persons with disabilities available that complies with the law.

25 17. The plaintiff personally encountered these violations and they denied
26 him full and equal access and caused him difficulty and frustration.

27 18. Additionally, and even though the plaintiff did not personally confront
28 the barrier, there are shelves and merchandise aisles open to customers for

1 shopping, but the path of travels in and throughout these merchandise aisles
2 are not accessible to wheelchair users because of the configuration of the store
3 and also because the defendants have a practice of placing merchandise and
4 merchandise display on the route of travel restricting passage to far less than
5 36 inches in width.

6 19. In fact, the path of travel, in one part of the store, narrows to as little as
7 24 inches in width.

8 20. Plaintiff would like to return and patronize the Gas Station but will be
9 deterred from visiting until the defendants cure the violations.

10 21. Plaintiff lives in Los Angeles County and travels, shops, eats, and
11 otherwise patronizes businesses throughout the County on a regular and
12 ongoing basis.

13 22. The Gas Station is located about 15 minutes from plaintiff's home. This
14 Gas Station is conveniently located for plaintiff.

15 23. Additionally, on information and belief, the plaintiff alleges that the
16 failure to remove these barriers was intentional because: (1) these particular
17 barriers are intuitive and obvious; (2) the defendants exercised control and
18 dominion over the conditions at this location and, therefore, the lack of
19 accessible facilities was not an "accident" because, had the defendants
20 intended any other configuration, they had the means and ability to make the
21 change.

22 24. The violations identified above are easily removed without much
23 difficulty or expense. They are the types of barriers identified by the
24 Department of Justice as presumably readily achievable to remove and, in fact,
25 these barriers are readily achievable to remove. Moreover, there are numerous
26 alternative accommodations that could be made to provide a greater level of
27 access if complete removal were not achievable.

28 25. Plaintiff is and has been deterred from returning and patronizing the

1 Gas Station because of his knowledge of the illegal barriers that exist. Plaintiff
 2 will, nonetheless, return to the Gas Station to assess ongoing compliance with
 3 the ADA and will return to patronize the Gas Station as a customer once the
 4 barriers are removed.

5 26. Given the obvious and blatant violation, the plaintiff alleges, on
 6 information and belief, that there are other violations and barriers on the site
 7 that relate to his disability. Plaintiff will amend the Complaint to provide
 8 proper notice regarding the scope of this lawsuit once he conducts a site
 9 inspection. However, please be on notice that the plaintiff seeks to have all
 10 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
 11 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
 12 he can sue to have all barriers that relate to his disability removed regardless of
 13 whether he personally encountered them).

14
 15 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 16 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 17 Defendants.) (42 U.S.C. section 12101, et seq.)

18 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 19 again herein, the allegations contained in all prior paragraphs of this
 20 complaint.

21 28. Under the ADA, it is an act of discrimination to fail to ensure that the
 22 privileges, advantages, accommodations, facilities, goods and services of any
 23 place of public accommodation is offered on a full and equal basis by anyone
 24 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 25 § 12182(a). Discrimination is defined, inter alia, as follows:

- 26 a. A failure to make reasonable modifications in policies, practices,
 27 or procedures, when such modifications are necessary to afford
 28 goods, services, facilities, privileges, advantages, or

1 accommodations to individuals with disabilities, unless the
 2 accommodation would work a fundamental alteration of those
 3 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

4 b. A failure to remove architectural barriers where such removal is
 5 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 6 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 7 Appendix “D.”

8 c. A failure to make alterations in such a manner that, to the
 9 maximum extent feasible, the altered portions of the facility are
 10 readily accessible to and usable by individuals with disabilities,
 11 including individuals who use wheelchairs or to ensure that, to the
 12 maximum extent feasible, the path of travel to the altered area and
 13 the bathrooms, telephones, and drinking fountains serving the
 14 altered area, are readily accessible to and usable by individuals
 15 with disabilities. 42 U.S.C. § 12183(a)(2).

16 29. Any business that provides parking spaces must provide handicap
 17 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
 18 every eight of those handicap parking spaces but not less than one must be a
 19 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
 20 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six accessible
 21 parking spaces must be van accessible. 2010 Standards § 208.2.4.

22 30. Here, the lack of any accessible, compliant parking is a violation of the
 23 ADA.

24 31. Shelves and display units allowing self-service by customers at stores
 25 must be located on an accessible route. 1991 Standards § 4.1.3(12)(b). An
 26 accessible route must be at least 36 inches in width. 1991 Standards § 4.3.3.

27 32. Here, the failure to provide accessible paths of travel in and throughout
 28 the merchandise aisles is a violation of the law.

1 33. A public accommodation must maintain in operable working condition
 2 those features of its facilities and equipment that are required to be readily
 3 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

4 34. Here, the failure to ensure that the accessible facilities were available
 5 and ready to be used by the plaintiff is a violation of the ADA.

6 35. Given its location and options, the Gas Station is a location that the
 7 plaintiff will continue to desire to patronize but he has been and will continue
 8 to be discriminated against due to the lack of accessible facilities.

9
 10 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 11 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 12 Code § 51-53.)

13 36. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 14 again herein, the allegations contained in all prior paragraphs of this
 15 complaint.

16 37. Because the defendants violated the plaintiff's rights under the ADA,
 17 they also violated the Unruh Civil Rights Act and are liable for damages. (Cal.
 18 Civ. Code § 51(f), 52(a).)

19 38. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 20 discomfort or embarrassment for the plaintiff, the defendants are also each
 21 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 22 (c).)

23
 24 **PRAYER:**

25 Wherefore, Plaintiff prays that this Court award damages and provide
 26 relief as follows:

27 1. For injunctive relief, compelling Defendants to comply with the
 28 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the

1 plaintiff is not invoking section 55 of the California Civil Code and is not
2 seeking injunctive relief under the Disabled Persons Act at all.

3 2. Damages under the Unruh Civil Rights Act and/or the California
4 Disabled Persons Act, which provides for actual damages and a statutory
5 minimum of \$4,000.

6 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
7 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

8
9 Dated: January 27, 2016

CENTER FOR DISABILITY ACCESS

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11 By: _____
12 Mark Potter, Esq.
13 Attorneys for Plaintiff
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